

CDCR Valdivia Monitoring Report

North Kern State Prison

2008-4th Quarter



CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION



VALDIVIA MONITORING TOUR North Kern State Prison



Final Report to Task Force

Submitted by the

OFFICE OF COURT COMPLIANCE

November 24, 2008

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VALDIVIA/ARMSTRONG TOUR REPORT

North Kern State Prison

4th Quarter 2008

November 4-6, 2008

I. EXECUTIVE SUMMARY

A) Purpose of the Tour

The Office of Court Compliance (OCC) observed parole revocation proceedings at the North Kern State Prison (NKSP) and met with California Department of Corrections and Rehabilitation (CDCR) and California Parolee Advocacy Program (CalPAP) staff. The OCC also toured the Hanford Parole Unit. The purpose of the tour was to evaluate CDCR's compliance with the requirements of the *Valdivia* Permanent Injunction, the *Valdivia* Remedial Plan, and current departmental policy and procedure pertaining to parole revocation.

B) Tour Attendees

The CDCR representatives were Russa Boyd, Deputy Commissioner; Tracy Master, Parole Services Associate; and Greg Wyke, Correctional Counselor II, all from the Office of Court Compliance.

C) Administration of the Tour

The monitoring group observed the following processes:

Revocation:

- 0 Notice of Rights/Charges,
- 9 Probable Cause Hearings, and
- 0 Revocation Hearings.

The monitoring group also reviewed the following documents/revocation packets:

- 50 revocation packets. **(Exhibits 1-A and 1-B).**

The OCC reviewed 50 revocation packets prior to the tour in order to measure compliance with the *Valdivia* time frames as well as due process and procedural requirements. The revocation packets were collected from CalPAP allowing OCC to conduct analysis on packets provided to defense counsel and to identify issues specific to the site prior to the tour. A summary of the timeliness for each revocation step can be found in Exhibit 1-A. Compliance statistics and trends gathered from a review of the revocation packets are discussed in each section below. Although the body of the report addresses the most pertinent and recurring compliance deficiencies, a summary of all compliance deficiencies identified from a review of the revocation packets can be found in Exhibit 1-B.

In addition, the monitoring team collected revocation packets for the cases observed during the tour itself. A discussion of the compliance trends and deficiencies identified during the tour are discussed in the body of the report and accompanying exhibits but are not included in Exhibits 1-A or 1-B.

D) Corrective Action Plan:

This report identifies areas in need of corrective action(s) where compliance deficiencies were observed during the monitoring tour and/or through a review of the revocation documents. The OCC has identified corrective action(s) for any deficiency associated with the *Valdivia* procedures/process where the compliance rate was determined to be less than 90%. The Office of Court Compliance will allow each applicable division to develop the corrective action they deem most appropriate for remedying the compliance deficiencies identified in this report. However, the OCC will continue to provide input and suggestions to the affected divisions in order to develop efficient corrective action and any necessary policy changes, and is available to assist with any aspect of corrective action development or implementation.

II. Probable Cause Determination

No later than 48 hours after placement of the parole hold, or no later than the next business day if the hold is placed on a weekend or holiday, the parole agent and unit supervisor will confer to determine whether probable cause exists to continue the parole hold, and will document their determination. (Paragraph 11(b)(ii)) *Valdivia* Permanent Injunction.

- **98% compliant with requirement that a probable cause determination be completed no later than 48-hours after placement of parole hold.**

The monitors reviewed 50 cases prior to the tour to measure the timeliness of the probable cause determination (PCD). There was one revocation packet that did not include the CDCR 1502-B. **(Exhibit 1-B)**. In another case the unit supervisor did not date his review on the 1502-B. *Id.* The timeliness of the PCD was therefore not evaluated in these two cases. A timely probable cause determination was completed in 47/48 revocation packets reviewed prior to the tour (98%). **(Exhibit 1-A)**.

Hanford Parole Unit

The monitors had the opportunity to interview the Assistant Unit Supervisor (AUS) regarding the parole revocation process and the requirements of the *Valdivia* Permanent Injunction. The AUS did not report any issues concerning his ability to conduct a timely and complete PCD. His statements are supported by the 99% compliance rating reflected in RSTS at the PCD step for the month of October 2008. **(Exhibit 2)**.

The AUS reported agents are expected to review the field file and include all known charges at the time of arrest. This subject was covered during the statewide DAPO training. The direction provided is that agents are to include all known charges on the 1502-B at the time the report is written. There were 12/49 cases reviewed prior to the tour in which charges were added after the parolee was served notice. In 5/12 cases (42%) investigation revealed the parole agent had, or should have had, information to support the additional charge(s) at the time the 1502-B was authored. **(Exhibit 1-B)**. However, none of the deficient cases were from the Hanford parole unit. **See Section III below for a more detailed discussion and analysis on the cases in which charges were**

inappropriately added after the parolee was served notice but the parole agent had enough information to include the additional charges on the 1502-B.

10/49 (20%) 1502-Bs reviewed prior to the tour failed to meet the requirement to provide a short factual summary of each charged parole violation. **(Exhibit 1-B). See Section III below for more detailed discussion regarding the content of the 1502-B for purposes of serving the parolee adequate notice of the alleged parole violations, as required by the Injunction.**

Review of the revocation documents

A review of the revocation packets revealed the following compliance deficiencies:

- In 2/49 cases (4%), the CDCR 1502-B Probable Cause box was not marked by the Unit Supervisor. The Probable Cause box is part of the Unit Supervisor's decision and documents that probable cause was found to maintain the parole hold. **(Exhibits 1-B and 3).**

❖ CORRECTIVE ACTION REQUIRED:

- Paragraph 11 of the *Valdivia* Permanent Injunction requires that the parolee be served with *actual notice of the alleged parole violation, including a short factual summary of the charged conduct*. The OCC recommends that DAPO review any current policies and procedures that address what information must be included on the CDCR 1502-B and make revisions to ensure the due process requirement regarding provision of a short summary of the charged conduct is met. It is also recommended that DAPO disseminate a policy and procedure requiring that an adequate short statement of fact for each alleged violation of parole be included on the CDCR 1502-B, and include specific guidance on minimum standards regarding the adequacy of the factual summary.
- Unit Supervisors must ensure that parole agents include all known or knowable charges on the 1502-B when it is written, as required by the current DAPO training, which addresses this requirement and directs agents to include all known or knowable charges at the time the 1502-B is authored.

III. Notice of Rights/Charges

If the parole hold is continued thereafter, no later than 3 business days after the placement of the hold, the parolee will be served with actual notice of the alleged parole violation, including a short factual summary of the charged conduct and written notice of the parolee's rights regarding the revocation process and timeframes. (Paragraph 11(b)(iii)) *Valdivia* Permanent Injunction.

- 94% compliant with requirement that the Notice of Rights/Charges occur no later than 3-business days after the parole hold

- **98% compliant with providing parolee written notice of revocation rights and procedural timeframes (via the BPT 1100)**
- **80% compliant with requirement that a short factual summary of charged conduct be provided at the time of notice (via the CDCR 1502-B).**

Timeliness of Notice

The OCC uses the parolee signature and date on the BPT 1100 to determine the timeliness of notice. There was one case reviewed prior to the tour that was missing the BPT 1100. **(Exhibit 1-B)**. It is critical the BPT 1100 is included in every complete copy of the revocation packet (both the BPH and attorney copies). Without the BPT 1100, which includes the parolee's signature acknowledging service, there is no way to verify the parolee was actually served notice of his/her parole revocation rights and charges. Out of the 49 total cases reviewed for compliance with the timeliness requirement, 46 were timely (94%). **(Exhibit 1-A)**. The late cases averaged 1.3 days late. *Id.* According to CalPAP's September 2008 "Notice of Rights Compliance Report," 90.86% of notices were timely for cases processed out of the Wasco CalPAP office. **(Exhibit 4)**.

Notice of Rights Observations

There were no notices to be completed at NKSP during the monitoring tour. The monitors did interview the DRUNA assigned to NKSP and she reported she is not experiencing any issues or concerns related to conducting or completing notices at NKSP. Additionally, because of staffing shortages, she is also responsible for conducting notices at Wasco State Prison. The monitors had an opportunity to observe her conduct a notice at Wasco and did not identify any deficiencies in her notice process.

Adequate statement of facts on the CDCR 1502-B

Minimum due process, as defined in *Morrissey*, requires the parolee be provided written notice of the claimed violation of parole and the *Valdivia* Permanent Injunction requires the parolee be given **"actual notice of the alleged parole violation, including a short factual summary of the charge conduct."** Officers from outside law enforcement agencies do not provide the details of most arrests prior to completion and submission of their arrest report. Therefore, the parole agent does not know the facts to support the alleged violations until the arresting officer generates the police report. CDCR maintains that stating the information provided by the arresting law enforcement agency, including the name of the arresting agency and charge(s) the parolee was reportedly arrested for, is sufficient until the final police report is made available to the parole agent.

In those instances where DAPO initiates the arrest, or the facts underlying the arrest are known to the parole agent, a short factual summary of the charged conduct, including a summary of the parolee behavior and/or evidence leading to the violation charge(s), should be included on the CDCR 1502-B (rather than a minimal recitation of the charges themselves). For example, if a parolee is arrested by law enforcement on a Parolee at Large (PAL) warrant, the parole agent should indicate on the 1502-B the facts that support the absconding charge. The short factual summary might read that the agent attempted a home visit and left a card with reporting instructions, but the parolee did not

report, and contacted family members living at the parolees ROR who indicated that they have not seen the parolee for weeks. Such language provides a factual basis for the charge. It is insufficient if the parole agent simply indicates the parolee was arrested on a PAL warrant. The parolee behavior that gives rise to issuance of the PAL warrant is the critical component of the required factual summary. A short factual summary of the charged conduct is necessary to serve the parolee notice of the alleged violations and allow him/her to know the facts that supported placement of the parole hold and begin formulating a defense. This is required by the Permanent Injunction.

10/49 (20%) 1502-Bs reviewed prior to the tour failed to meet the requirement to provide a short factual summary of each charged parole violation. **(Exhibits 1-B and 3)**. Each deficient case is summarized in the table below:

Parolee name/ CDC #	Charges listed on 1502-B	Inadequate Short Factual Summary
Aguilar (F66691)	1. Illicit use of meth 2. Poss. of meth 3. Poss. of meth for sale. 4. Illegal entry into USA. 5. Fail to report to DAPO.	Charges 1, 2 & 3 inadequate- the 1502-B merely states, "Subject was arrested by Riverside PD for the above charges." There are no facts presented to support the charges.
Buckalew (F82331)	1. Violation spec. condition: fail to participate in & complete Prop 36 program. 2. Absconding 3. Use of meth	Charge 2 inadequate-The report fails to cite any evidence to support the agent's conclusion that the parolee had absconded parole supervision. Just because the parolee was absent from his Prop. 36 program does not mean he was unavailable for parole supervision. The report does not indicate how the parole agent determined the parolee had absconded.
Chism (P80100)	1. Absconding 2. Resisting arrest	Charge 1 inadequate-The report indicates the parolee was arrested by SDPD PAL warrant based on BPH's action to suspend parole after the agent issued a PAL report. The report fails to cite any facts that led the parole agent to conclude the parolee had absconded.
Frausto (V77740)	1. Absconding	Charge 1 inadequate-The report merely states the parolee was arrested by Tulare PD on an outstanding warrant for absconding. The agent fails to articulate any facts that led to the conclusion that the parolee was unavailable for parole supervision.
Hanggi (F66221)	1. Absconding	Charge 1 inadequate-The report merely states that the parolee was arrested by Tulare SO for absconding parole supervision. The agent fails to articulate any facts that led to the conclusion that the parolee was unavailable for parole supervision.
Howard (H55053)	1. Failure to attend POC	Charge 1 inadequate-The report merely states that the parolee failed to follow instructions given by his parole agent but includes no facts to show how or when the parolee failed to attend the POC.
Johnson (T74620)	1. Absconding 2. Violation spec. condition. of parole-	Charge 1 inadequate-The report merely states that the parolee was contacted by Tulare police and found to have an outstanding PAL warrant. The

	failure. to attend DVIP	agent failed to articulate any facts that led to the conclusion that the parolee was unavailable for parole supervision.
Piedra (K91922)	1. Absconding 2. Associating w/ prohibited person. 3. Vandalism 4. Fail to register PC290	Charges 1, 3 & 4 inadequate- The report merely states that the parolee was arrested for a PAL warrant. The agent does not include any facts that led to the conclusion that the parolee was unavailable for parole supervision. In addition, the report is absent of any information on charges 3 & 4.
Rodriguez (F84670)	1. Absconding	Charge 1 inadequate-The report merely states that parole was suspended because the parolee absconded supervision. The agent fails to articulate any facts that led to the conclusion that the parolee was unavailable for parole supervision.
Stepp (T81138)	1. Absconding 2. Use of meth 3. False ID to police 4. Failure to register per H&S 11590	Charge 1 inadequate- The report merely states a miscellaneous decision was submitted requesting to suspend parole. The agent fails to articulate any facts that led to the conclusion that the parolee was unavailable for parole supervision.

The OCC continues to see this issue at most locations in the state. At the core of agents' failure to include an adequate factual summary on the 1502-B to sufficiently notice the parolee may be that the applicable DAPO policy (04-30) does not give clear direction to agents on the requirement of the Injunction in this regard. DAPO did issue an informational memorandum on January 2, 2008 that provides the necessary direction to bring agents into compliance. DAPO also issued a *Valdivia* Alert on June 12, 2008, directing staff to include a short factual summary for all known charges. Additionally, in the 2004 roll-out training for *Valdivia*, and in the refresher training conducted in 2006 and 2007 for agents, specific direction was given about including a short factual summary on the 1502-B. DAPO should consider amending policy 04-30 to include the requirement that agents include a short factual summary for each charge on the 1502-B, and provide clear direction on the minimum standards to meet this requirement.

Staff from DAPO Headquarters is currently conducting statewide training for field staff, which includes a discussion regarding minimum standards for the factual summaries contained on the 1502-B, as well as the Injunction's requirements as they pertain to noticing the parolee of the charges against them. OCC staff has observed the training and field staff appear receptive to the information provided. The OCC anticipates that the training will create the foundation for improved report content in this regard during future monitoring. However, the OCC will continue to monitor this issue and recommend additional corrective action if needed.

Charges Added After Notice

CDCR acknowledges that the 1502-B should include all alleged parole violations known to the parole agent at the time the report is authored. According to DAPO informational memo dated January 2, 2008, entitled "Violation Report Format and Content," "The parole agent shall include all known or suspected charges at the time the Charge Report is completed." Although this document is not DAPO policy, it provides guidance to agents and is available as a reference to improve the content and quality of reports.

Pursuant to the terms of the *Valdivia* Permanent Injunction and Remedial Plan, the agent of record is given time between submission of the 1502-B and completion of the CDCR 1676 (Violation Report) in order to conduct a follow-up investigation regarding the parole violation(s) alleged against the parolee. During this investigation the agent may discover information leading to additional charges against the parolee which were not presented at the time the NOR was completed, and which the parole agent was not aware of at the time the 1502-B was completed. This is often the case where an arrest is initiated by local law enforcement, who often informs the parole agent of the initial reason the parolee was placed into custody. In a number of cases the parole agent does not learn of the panoply of charges alleged against the parolee until local law enforcement concludes its investigation and provides DAPO their complete incident report, after the 1502-B has been completed. CDCR maintains it is not a violation of due process or the *Valdivia* Permanent Injunction when charges are added after the NOR, where the agent did not have knowledge of the additional charges at the time the 1502-B was written. However, a number of cases were reviewed wherein the parole agent had, or should have had, all information related to the added charges at the time the 1502-B was authored but did not include those charges on the 1502-B for presentation to the parolee at the notice.

There were 12/49 cases in which charges were added after the parolee was served notice. **(Exhibit 1-B)**. In 5/12 cases (42%) investigation revealed the parole agent had, or should have had, information to support the additional charge(s) at the time the 1502-B was authored. *Id.* In 7/12 cases (58%) the investigation revealed that the parole agent did not have knowledge of the charge(s) when writing the 1502-B, justifying the additional charge(s) on the CDCR 1676 when written. A summary of the cases in which the added charges were known, or knowable, can be found in the table below:

Parolee name/ CDC #	Charges Added to Violation Report after Parolee Served Notice	Charges Known or Knowable
Barnes (V33443)	1. Violation Special Conditions of Parole- Failed to Submit ANT.	The VSCOP for failing to submit to ANT is discussed in the narrative of the CDCR 1502-B but is not a listed charge. The AOR obviously had knowledge of this charge at time the charge report was authored but did not include it as one of the charges on the 1502-B.
Hanggi (F66221)	1. Illicit Use Amphetamine/Methamphetamine. 2. Illicit Use Amphetamine/Methamphetamine.	The AOR cites in the violation report that ANT results received on 3/02/08 and 6/04/08 proved positive for illicit use of Amphetamine and Methamphetamine. The AOR knew about the positive test results prior to the 8/09/08 arrest but the charges were not included on the 1502-B.
Howard (H55053)	1. Change residence without informing DAPO.	The 1502-B appears to have been authored by someone other than the AOR. On the violation report AOR indicates on 7/14/08 parolee advised him of changed ROR and subsequent checks proved negative of the ROR, all of which occurred prior to the parolee's arrest and

		completion of the 1502-B. Therefore, the AOR knew or should have known of this charge at the time the 1502-B was authored. However, it is possible that the agent who completed the 1502-B did not have information to support the additional charge when the 1502-B was written.
Hurtado (T0315)	1. Fail to Report to DAPO. 2. Fail to Follow Instructions from DAPO (Complete Prop 36	Failure to report- the AOR indicates he made several attempts, prior to the arrest date, to locate parolee all which proved negative. Failure to follow instructions- the narrative section of the violation report does not include and direct supporting evidence. The only indication of parolee's failure to complete Prop 36 is located in the parolee's statement section of the violation report. As written, the AOR knew or should have known of these charges when the 1502-B was authored because the alleged violations all occurred prior to the parolee's arrest.
McCullough (V29573)	1. Change ROR W/O Informing DAPO	The AOR indicates on the 1502-B that parolee was contacted at 925 ½ Grant Ave. then cites on the violation report that this address was not the ROR. Clearly AOR should have known that was not the parolee's address at the time the parolee was contacted and the 1502-B authored.

Review of the Revocation Documents

A review of the revocation packets collected prior to the tour revealed the following pertinent compliance deficiencies. A breakdown of all compliance deficiencies identified from a review of the notice documents can be found in Exhibit 1-B. Copies of the corresponding deficient 1073s are attached as **Exhibit 5**.

- In 7/12 cases (58%) in which Section I identified a disability, needed accommodation, or reading/GPL level below 4.0, no source document was attached to the BPT 1073. Where a disability is noted in Section I, the verifying source document should be included in the revocation packet.
- In 4/49 cases (8%), Section III was completed incorrectly. No boxes were marked to indicate whether or not the parolee appeared to understand the Notice of Rights/Charges. The notice agent should check one of the boxes provided to indicate the parolee appeared to understand or appeared to have difficulty understanding.
- In 5/10 (50%) cases in which Section I of the 1073 indicated some accommodation need, or the parolee self-identified a disability or accommodation need in Section II of the BPT 1073, the notice agent did not document in Section III that an accommodation was offered or provided during the NOR to facilitate effective communication. This information should be documented to protect the notice agents from any claims that an accommodation was not provided during the notice, despite the parolee's documented needs.

❖ **CORRECTIVE ACTION REQUIRED:**

- Paragraph 11 of the *Valdivia* Permanent Injunction requires that the parolee be served with *actual notice of the alleged parole violation, including a short factual summary of the charged conduct*. The OCC recommends that DAPO review any current policies and procedures that address what information must be included on the CDCR 1502-B and make revisions to ensure the due process requirement regarding provision of a short summary of the charged conduct is met, if necessary. It is also recommended that DAPO disseminate a policy and procedure requiring that an adequate short statement of fact for each alleged violation of parole be included on the CDCR 1502-B, and include specific guidance on minimum standards regarding the adequacy of the factual summary.
- Unit Supervisors must ensure that parole agents include all known or knowable charges on the 1502-B when it is written, as required by the current DAPO training, which addresses this requirement and directs agents to include all known or knowable charges at the time the 1502-B is authored.
- DAPO should develop policy and provide training/instruction to notice agents requiring them to document whether an accommodation was offered or provided during the notice based on the information provided in Sections I and II of the 1073. This demonstrates compliance with the ADA requirements in both the *Valdivia* and *Armstrong* litigation and protects the notice agents from later claims that an accommodation was not offered or provided during the notice although a disability or accommodation need was documented on the 1073.
- The OCC will continue to monitor the issue of missing source documents and conduct investigation to determine the causes and report to the appropriate division the findings and recommended corrective action. DAI and DAPO should also review pre-release packet procedures regarding the inclusion of source documents to determine why source documents are not consistently included in parole packets or forwarded to the parole units for inclusion in the field file.

IV. Unit Supervisor Review of Violation Report

- 100% compliant with requirement that the Unit Supervisor review the Violation Report no later than seven business days after the parole hold is placed.

The Valdivia Remedial Plan requires the Unit Supervisor review the Violation Report and: (1) determine if there is sufficient basis for the revocation to go forward; (2) determine if the report is accurate, complete, and contains the correct title 15 violation section(s); and (3) review the report and consider whether or not remedial

sanctions/community based treatment is appropriate in lieu of proceedings with referral to the BPH with a recommendation that the parolee be returned to prison. This review must occur no later than seven business days following placement of the parole hold.

A timely Unit Supervisor review of the violation report was conducted in all 50 of the revocation packets reviewed prior to the tour (100%). (**Exhibit 1-A**). This is a 3% increase in the timeliness reported in the second quarter, 2008, self-monitoring report for NKSP. The monitors met with the Assistant Unit Supervisor (AUS) at the Hanford Parole Unit. He reported the office makes every effort to meet the mandated *Valdivia* timeframes but current staff vacancies in the parole agent and clerical classifications can create extra workload. The RSTS "Closed Case Summary-Valdivia Timeliness Rules" report for Hanford Parole Unit reflects a positive compliance rating of 99% in both the PCD and Refer steps. (**Exhibit 2**). Thus, the RSTS data also verifies that, despite the staffing vacancies, revocation timelines are being met with high compliance rates.

One issue brought to the monitors' attention is that parole agents from the Hanford unit must drive more than 50 miles to NKSP for a revocation hearing, which can place an undue burden on local witnesses and agents who are required to attend a revocation hearing at NKSP. Unfortunately, the BPH does not have access to any local county facilities except the Fresno County Jail.

The AUS reported the unit has attended the DAPO statewide training, which included training on *Valdivia* requirements. He reported that the training was informative and gave clear direction on expectations regarding the content and quality of the completed revocation packet.

The AUS reported that cases are screened for priority designation by the US/AUS; if the case meets the criteria the supervisor will stamp the violation report "Priority." Of the 19 cases reviewed prior to the tour that met the criteria for "Priority" designation, the parole agent or Unit Supervisor did not designate "Priority" on the first page of the CDC 1676, as required by DAPO policy, in 12 cases (63%). (**Exhibits 1-B and 6**). However, none of the deficient cases were from the Hanford parole unit, which verifies the AUS's statements. Several of the deficient cases originated from the Visalia parole units.

Other than the current staffing vacancy, clerical staff did not report any issues negatively impacting their ability to process revocation packets within the mandated timeframes.

Arrests and convictions noted together on the CDCR 1521-B

There were only 5/50 (10%) CDCR 1521-Bs reviewed prior to the tour that included prior arrest and convictions together in a way that made it impossible to differentiate the two. Although parole agents were not historically directed that arrests and convictions should not be included together on the 1521-B, the practice makes it difficult for deputy commissioners and parole administrators to accurately determine "Priority" status, consider whether a parolee is appropriate for a remedial sanction or determine mitigation/aggravation for purposes of case disposition. The OCC recognizes that parole agents are currently completing the form in a manner consistent with departmental

policy, but suggest that the directions for completion of the form be revisited by DAPO's leadership to ensure that the completed form provides the necessary information in a discernible manner. DAPO is currently conducting statewide training for field staff. This subject is included in the training and agents have been directed to differentiate arrest from convictions on the 1521-B. OCC monitors attended the training and the direction is clearly articulated and staff seemed receptive to the information provided. The OCC has already seen improvement on this issue since the second quarter 2008 self-monitoring tour at NKSP, where 24% of 1521-Bs reviewed at that time did not differentiate arrests from convictions.

Inclusion of CDC 1515 when Parolee Charged with Violating a Special Condition of Parole

The self-monitoring tour report for the second quarter 2008 reflected that the CDC 1515 (conditions of parole) were not included in 62% of cases in which the parolee was charged with violating a special condition of parole. Compliance on this issue has improved dramatically since the last tour. There were 24 cases reviewed prior to this tour in which the parolee was charged with violating a special condition of parole. The CDC 1515 was included in the revocation packet in all but one case. **(Exhibit 1-B)**. The parole agents and unit supervisors should be commended for including this supporting evidence in their revocation packets when the parolee faces and allegation that a special condition of parole has been violated. The CDC 1515 allows defense counsel and the deputy commissioner to verify that the special condition in fact exists and that it was effectively communicated to the parolee.

❖ CORRECTIVE ACTION REQUIRED:

- **Unit Supervisors and Parole Agents must familiarize themselves with DAPO/BPH memorandum "Processing of Revocation Cases Related to the Penal Code (PC) Sections 1192.7 (c), and 290" dated May 17, 2005, which outlines the procedures for identifying "Priority" cases on the Violation Report and in RSTS.**

V. Parole Administrator Review

- **96% compliant with the requirement that a Parole Administrator review the revocation packet no later than nine business days after the parole hold is placed.**

The *Valdivia* Remedial Plan requires that the revocation packet be reviewed by a Parole Administrator (Par Ad) no later than nine business days after placement of the parole hold. The Parole Administrator must determine whether or not there is a sufficient basis for the case to move forward and whether or not remedial sanctions/community-based treatment is appropriate.

A Par Ad documented their review of all 50 cases analyzed prior to the tour. A timely Par Ad review occurred in 48/50 cases. **(Exhibit 1-C)**. The late cases averaged 1.5 days late.

Due to the low volume of NKSP, the Par Ads split their time between NKSP and Wasco State Prison. The Par Ad believes that revocation packet scanning would enable Par Ads to easily access revocation packets for review or to field questions regarding a case (remedial sanctions eligibility or exclusionary criteria, for example), regardless of their physical location. This would allow them to perform their functions continuously at one location and better manage the workload without having to change physical location.

The Par Ad reported he considers remedial sanctions in every case to screen for eligibility and determine an appropriate recommendation before forwarding the case to the BPH. The Par Ad is also a resource for deputy commissioners seeking remedial sanctions information during hearings at NKSP (program availability, program criteria, etc.).

Review of the revocation documents

A review of the revocation packets analyzed prior to the tour yielded the following compliance deficiency:

- Of the 19 cases that met the criteria for “Priority” designation, the Parole Administrator did not create a “Priority” designation, as required by DAPO policy, in RSTS in two cases (10%). (**Exhibits 1-B and 7**).

❖ CORRECTIVE ACTION REQUIRED:

- **Parole Administrators must familiarize themselves with DAPO/BPH memorandum “Processing of Revocation Cases Related to the Penal Code (PC) Sections 1192.7 (c), and 290” dated May 17, 2005, which outlines the procedures for identifying “Priority” cases on the Violation Report and in RSTS.**

VI. Return to Custody Assessment

- **96% compliant with RTCA timeliness requirement.**

The *Valdivia* Remedial Plan requires that a Return to Custody Assessment (RTCA) be conducted no later than 10 business days after the parole hold is placed. A timely RTCA was completed in 48/50 cases reviewed prior to the tour (96%). (**Exhibit 1-A**).

Only one issue was reported or identified regarding the RTCAs. According to CalPAP, approximately one-half of cases assigned to the Wasco office are missing the BPH 1104-RTCA at the time of appointment. Often times the RTCA is not available until the PCH occurs. The Associate Chief Deputy Commissioner (ACDC) echoed this sentiment, reporting that the current lack of deputy commissioners creates circumstances in which RTCAs are not always completed in a timely manner because current deputy commissioner staffing levels require that most time be dedicated to conducting probable cause and revocation hearings. The ACDC reported that he only has one full-time deputy commissioner; all others are retired annuitants.

Review of the revocation documents

A review of the revocation packets did not reveal any compliance deficiencies at the RTCA step.

❖ CORRECTIVE ACTION REQUIRED:

- **BPH Headquarters should conduct investigation to determine deputy commissioner staffing needs at NKSP and the Wasco State Prison to ensure that both institutions are properly staffed to complete the workload associated with parole revocation and meet the mandates of the Permanent Injunction and Remedial Plan.**

VII. Appointment of Counsel

Defendants shall appoint counsel for all parolees beginning at the RTCA stage of the revocation proceeding. Defendants shall provide an expedited probable cause hearing upon a sufficient offer of proof by appointed counsel that there is a complete defense to all parole violation charges that are the basis of the parole hold. (Paragraph 11(b)(i)) Valdivia Permanent Injunction.

Timely Appointment of Counsel

BPH staff entered information into RSTS regarding the timely appointment of counsel in 48/50 cases reviewed prior to the tour (via the RSTS packet tracking feature). Counsel was appointed timely in 46/48 reviewable cases (96%). According to CalPAP's September 2008 "Date Case Assigned Compliance Report," 92.96% of cases assigned to the Wasco office were assigned in a timely manner. **(Exhibit 4).**

CalPAP Interviews

The monitors met with the staff attorneys at the Wasco CalPAP office, who reported a few issues related to the revocation process. The issues identified by CalPAP are discussed under the appropriate headings throughout this report in order to maintain continuity and separate issues by their topic.

CalPAP reported that revocation packets are almost always complete. During the second quarter 2008 self-monitoring tour at NKSP, CalPAP indicated that the CDC 1654 (witness list) was not consistently included in the revocation packets, which made it difficult for defense counsel to formulate defense strategy or determine what witnesses the State intended to call. In fact, 86% of revocation packets reviewed during the second quarter 2008 did not contain the 1654. In order to remedy this issue the OCC worked with DAPO and BPH to issue notice to staff in the region that the 1654 must be included in the attorney's copy of the revocation packet. DAPO sent a *Valdivia* Alert to staff directing that legible and complete 1654s must be submitted with every revocation packet. The ACDC verbally instructed DRU staff to ensure that a copy of the 1654 is included in all attorney packets. CalPAP now reports that the 1654 is included in virtually every revocation packet and the OCC's analysis of revocation packets reviewed during this tour reveal that the 1654 was included in 96% of revocation packets. **(Exhibit 1-B).** This is a significant improvement and the OCC considers the corrective action taken on this issue to be appropriate. The OCC deems this issue corrected.

Review of the Revocation Documents

A review of the revocation packets analyzed prior to the tour revealed the following compliance deficiency:

- In 38/50 (76%), CalPAP did not complete the “Notice Acknowledgement” segment of the BPT 1104-B. The line requiring verification of forms received during the notice was not completed. The purpose of this line is to act as a check and balance on the CDCR’s provision of documents to the parolee during parole revocation proceedings. If the parolee received all documents during the notice, the attorney should have written “N/A” on the corresponding line. If any document was not provided during the notice, the attorney should indicate such. **(Exhibits 1-B and 8).**

❖ CORRECTIVE ACTION REQUIRED:

- **CalPAP staff attorneys must direct contract attorneys on the proper method for completing the BPT 1104-B.**

VIII. Effective Communication and Effective Communication with Appointed Counsel

At the time of appointment, counsel appointed to represent parolees who have difficulty in communicating or participating in revocation proceedings, shall be informed of the nature of the difficulty, including but not limited to: mental illness, other cognitive or communication impairments, illiteracy, limited English-language proficiency, and the need for a foreign language interpreter. The appointment shall allow counsel adequate time to represent the parolee properly at each stage of the proceeding. (Paragraph 13) Valdivia Permanent Injunction.

Defendants will ensure that parolees receive effective communication throughout the entire revocation process. (Paragraph 18) Valdivia Permanent Injunction.

Minimum due process of law, as outlined in *Morrissey v. Brewer*, does not contemplate effective communication during parole revocation proceedings. However, CDCR must provide effective communication and accommodations to parolees with disabilities at all parole proceedings, pursuant to litigation in *Armstrong v. Schwarzenegger*. The *Valdivia* Permanent Injunction requires effective communication and provision of reasonable accommodation(s) throughout the revocation process.

Missing BPT 1073s and/or Source Documents

The BPT 1073 was included in 49/50 revocation packets reviewed prior to the tour (98%). **(Exhibit 1-B)**. There were 12 cases in which Section I of the 1073 identified a disability, needed accommodation, or reading/GPL level below 4.0. However, in 7/12 cases (58%) no source document was attached to the BPT 1073. **(Exhibits 1-B and 5)**. Where a disability is noted in Section I, the verifying source document should be included in the revocation packet. According to CalPAP’s September 2008 “Cases Missing 1073 and Source Documents Monthly Report,” only 1% of revocation packets were missing the 1073. **(Exhibit 4)**. Approximately 78% of packets that required a verifying source document included a copy of the source document. *Id.*

According to CalPAP's September 2008 "Cases missing 1073 & Source Documents Monthly Report," 99% of revocation packets contained the BPT 1073. **(Exhibit 4)**. 78% of cases that required a verifying source document had the document included in the packet. *Id.*

Disabilities and Effective Communication System (DEC)

The DRUNA is fully trained on the requirements of DEC and used DEC as required by current policy and procedures. She did not report any issues or concerns.

The deputy commissioner at NKSP did not report any issues pertaining to her ability to access or utilize the DEC system. There was only 1/50 case reviewed prior to the tour in which the deputy commissioner did not complete Section V of the BPT 1073 in DEC when the hearing concluded. **(Exhibits 1-B and 9)**. The deputy commissioner observed during the tour checked DEC prior to each hearing and was seen updating the database at the conclusion of each hearing.

BPH staff at the NKSP DRU completed Section IV of the 1073 in DEC in every case, indicating what accommodation was planned for the probable cause or revocation hearing. DRU staff should be congratulated for their continued dedication to completing all mandated DEC entries.

Sign Language Interpreters

NKSP has a sign language interpreter on-site who is available should a sign language interpreter be required to complete a notice or provide translation services at an attorney consultation, PCH or revocation hearing.

Foreign Language/CyraCom

None of the observed hearings required utilization of the Language People telephone. The hearing rooms were stocked with telephones. No issues were reported by BPH staff regarding the phones or the translation services provided by Language People. The notice agents had CyraCom telephones for use during notices.

ADA Accommodations Available

Accommodations were available in the BPH hearing rooms, including vision magnifiers and hearing amplifiers. A wheelchair was also available for use. Although some parolees had their own glasses, parolees Hernandez (T92159) and Williams (G18000) reported vision problems and did not have glasses. The deputy commissioner immediately made the magnifier available throughout the hearing.

The notice agent carries the required ADA equipment, which includes the CyraCom telephone, hearing amplifier and magnifying sheet.

❖ CORRECTIVE ACTION REQUIRED:

- **The OCC will continue to monitor the issue of missing source documents and conduct investigation to determine the causes and**

report to the appropriate division the findings and recommended corrective action. DAI and DAPO should also review pre-release packet procedures regarding the inclusion of source documents to determine why source documents are not consistently included in parole packets or forwarded to the parole units for inclusion in the field file.

IX. Probable Cause Hearing

Defendants shall provide a hearing to determine probable cause no later than 10 business days after the parolee has been served with notice of the charges and rights (at the 3rd business day after placement of the hold). (Paragraph 11(d)) Valdivia Permanent Injunction.

At probable cause hearings, parolees shall be allowed to present evidence to defend or mitigate against the charges and proposed disposition. Such evidence shall be presented through documentary evidence or the charged parolee's testimony, either or both of which may include hearsay testimony. (Paragraph 22) Valdivia Permanent Injunction.

- **100% compliant with probable cause hearing timeliness requirement**
- **100% compliant with requirement that parolee be allowed to present evidence in defense and/or mitigation to the charge(s)**

Timeliness

A timely probable cause hearing (PCH) occurred in all 50 cases reviewed prior to the tour. **(Exhibit 1-A)**. The monitors also observed nine PCHs during the tour, all of which were timely. Therefore, 59/59 PCHs were timely. According to CalPAP's September 2008 "Probable Cause Hearing Compliance Report," 91.80% of PCHs for cases processed out of the Wasco CalPAP office were timely. **(Exhibit 4)**. None of the 11 cases reviewed by plaintiffs' counsel during their first quarter 2008 monitoring tour were untimely at the PCH stage.

Quality of Hearings

One retired annuitant deputy commissioner presided over the observed PCHs. She was thorough and consistent throughout the hearings. The monitor did not observe any compliance deficiencies in the administration of the hearings. The deputy commissioner conducted comprehensive ADA/DEC reviews and ensured that any parolees with disabilities were adequately accommodated. In several cases the parolee's TABE score was not available. As a result, the deputy commissioner asked a series of questions to gauge the parolee's level of comprehension and provide any necessary accommodation. She reviewed the BPH 1100 and ensured that *Valdivia* timeframes had been met before proceeding with the hearing. The deputy commissioner reviewed the charges and allowed the parolee and defense counsel to present evidence in defense and mitigation to the charges. After making her probable cause finding the deputy commissioner verbally explained her findings and the evidence she relied on in reaching her conclusion.

The deputy commissioner was observed by plaintiffs' counsel during their first quarter 2008 tour at NKSP. In their subsequent report, plaintiffs stated the deputy commissioner did not document her review of remedial sanctions in several of the BPH 1103s prepared after the hearings. No such observations were made during this self-monitoring tour. The deputy commissioner was thorough in her screening for remedial sanctions and she documented her analysis of remedial sanctions on the BPH 1103 in every case. Furthermore, ICDTP was offered to two parolees, only one of whom accepted placement. Two other parolees were also considered for ICDTP but were deemed inappropriate for placement because they could not be housed in general population at the jails and had enemy concerns.

Parolee Williams (G18000) faced several charges, including violating a special condition of parole requiring that he complete a batter's program. The attorney requested that the charge be dismissed because nothing in the Violation Report spoke to the parolee's failure to complete the program. The deputy commissioner dismissed the charge, noting on the BPH 1103 that there was no evidence presented by DAPO to support the charge.

Parolee Hernandez (T92159) was charged with possession of a knife with a blade exceeding two inches, possession of a twister knife, possession of drug paraphernalia, and possession of burglary tools. During the ADA review it was acknowledged that the parolee needed assistance understanding procedures and forms. The parolee expressed some confusion regarding his conditions of parole, stating he did not fully understand them. The deputy commissioner took the time to read the parolee's conditions of parole to him, used simple English, and allowed the parolee to ask questions about the requirements listed on the form.

Evidentiary Basis for Probable Cause Finding Documented by Deputy Commissioner

Minimum due process requires that the hearing officer shall have the duty of making a summary, or digest, of what occurs at the hearing in terms of the responses of the parolee and the substance of the documents or evidence given in support of parole revocation and of the parolee's position. *Morrissey v. Brewer*, 408 U.S. 471 at 487 (1972). Furthermore, the decision maker should state the reasons for his determination and indicate the evidence he relied on..." *Id.* In order to meet this due process requirement, the deputy commissioner must document the actual evidence relied on when finding probable cause rather than simply citing the source of the evidence or the ultimate conclusion that probable cause was found. For example, if the parolee is charged with absconding it is insufficient to note "probable cause found based on AOR report." A better statement of the evidence relied on might state, "probable cause because parolee was left instructions to call AOR, but did not follow instructions and was unavailable for parole supervision from 03/15/08 until the date of arrest."

The deputy commissioners did not adequately document the evidentiary basis for their probable cause finding in 17/50 (34%) of the cases reviewed prior to the tour. (**Exhibits 1-B and 10**). The deputy commissioners generally wrote a sufficient evidentiary basis for each charge except absconding. For example, parolee Barnes faced three charges, including absconding. The deputy commissioner adequately documented evidence to

support two of the charges but wrote the following to support the absconding charge: "Probable cause was found in AOR's report in that parolee was unavailable for supervision from 7/28/08 until arrest on 7/21/08." This statement is insufficient because it does not document how the agent determined the parolee was, in fact, unavailable for supervision. Parole agents often do not know the exact location of a parolee but that does not mean they are unavailable for parole supervision. The critical evidence here is how the parolee was unavailable: did the agent attempted to locate the parolee? Did the agent leave any reporting instructions? Did the parolee fail to make himself/herself available as previously instructed? The deputy commissioner must include this critical information to support the finding that the parolee had absconded, not just summarize a conclusion that the parolee was unavailable.

The deputy commissioner observed during the tour adequately documented the evidentiary basis for her probable cause finding for every charge with the exception of absconding, as discussed above. (*See Exhibit 11 for corresponding deficient 1103s*).

Review of the revocation documents

A review of the revocation packets did not reveal any additional compliance deficiencies. BPH staff should be commended for their thorough work.

❖ CORRECTIVE ACTION REQUIRED:

- **Associate Chief Deputy Commissioners must ensure the DCs are documenting the actual evidence relied upon in making a finding of probable cause. Merely citing the source of the evidence alone does not comply with the requirements of minimum due process. BPH would also benefit from including this subject in the next training for deputy commissioners.**

X. Revocation Hearing

For all parolees who do not waive or seek a continuance of a final revocation hearing, Defendants shall provide a final revocation hearing on or before the 35th calendar day after the placement of the parole hold. (Paragraphs 11(b)(iv) and 23) Valdivia Permanent Injunction.

- **98-100% compliant with requirement that the parolee have a final revocation hearing no later than 35-calendar days from the parole hold.**

Minimum due process requires that a parolee be given an opportunity for a hearing, if it is desired, prior to the final decision on revocation by the parole. The *Valdivia* Permanent Injunction and *Valdivia* Remedial Plan require that a parolee be given a final revocation hearing no later than 35 calendar days after placement of the parole hold. No revocation hearings were scheduled to occur at NKSP during the tour. According to RSTS, there were only five revocation hearings at NKSP in the month of October 2008, all of which were timely. (**Exhibit 12**). According to CalPAP's "Revocation Hearings Cases- Over 35 Days" report, 98.02% of revocation hearings for cases processed out of the Wasco CalPAP office were timely. (**Exhibit 4**). In their February 19, 2008 letter,

plaintiffs' counsel also noted that none of the seven cases they reviewed in the third trimester 2007 were untimely. CDCR staff should be congratulated for their continued compliance with the 35-day revocation hearing timeframe.

XI. Remedial Sanctions

Plaintiffs' counsel, in their response to the second quarter 2008 self-monitoring tour report for NKSP, stated that the self-monitoring report "has no organized information about the consideration of remedial sanctions, spreading it throughout the report." Plaintiffs' counsel has no authority to dictate the manner in which defendants choose to organize their reports for the benefit of CDCR staff.

Plaintiffs' counsel then asserted that defendants should be considering *all* remedial sanctions (because Proposition 36 and ICDTP were offered to parolees during the observed proceedings and those were discussed in the self-monitoring report). Plaintiffs' counsel misinterpreted the contents of the self-monitoring report to infer their desired conclusion. According to the self-monitoring report, "The Unit Supervisors reported they advocate for remedial sanctions at each step of the revocation process when they deem a parolee appropriate for such a recommendation and make every effort to place parolees in programs including the ICDTP, STAR, PSC, RMSC, or other available program for which the parolee may be eligible." Furthermore, the self-monitoring report indicates that the parole administrator includes specific recommendations for remedial sanctions when deemed appropriate." These statements cannot reasonably lead the reader to infer that only ICDTP and Proposition 36 are considered. The monitoring team did review several cases in which the parole administrator recommended or the deputy commissioner offered ICDTP or Proposition 36 and used those cases as examples of consideration of remedial sanctions, but did not intend this statement to encompass every case processed out of the NKSP DRU.

Two parolees were offered ICDTP during the instant self-monitoring tour and one accepted placement (Estes, F33090).

According to RSTS, in the month of October 2008 DAPO gave parolees a remedial sanction (for non-mandatory referrals) or recommended that the parolee be given a remedial sanction by the BPH in 48% of cases at the PCD step, 48% at the Refer step and 6% at the Par Ad step. **(Exhibit 13)**. In addition, the BPH recommended or gave a remedial sanction in 13% of cases at the RTCA step, and actually ordered a remedial sanction in 9% of PCHs but not at any revocation hearings. *Id.*

All DAPO and BPH staff interviewed during the tour acknowledged their responsibility to consider remedial sanctions in every case and all had received the relevant DAPO and BPH memorandums on the subject of remedial sanctions.

The AUS at the Hanford parole unit reported he expects agents to consider and use remedial sanction placements in lieu of a return to custody, when the parolee is eligible and appropriate for placement. Factors that determine whether a parolee is appropriate for placement include, but are not limited to, criminal and parole history (history of

violence or serious criminal conduct), parole performance, prior opportunities to participate in substance abuse treatment, willingness to report to DAPO and be available for parole supervision, and risk to public safety. Additionally, the AUS will independently consider remedial sanctions during the case conference review. The AUS said he only had three Electronic In-home Detention devices (EID) but would like to have at least seven more as an additional resource due to their enhanced effectiveness in rural areas. Agents are encouraged to use neighboring communities who accept parolees into their community programs as additional remedial sanctions resources.

XII. Mentally Ill Parolees

According to CalPAP's 10/31/08 GAP parolee log, there are currently seven parolees out of the Wasco CalPAP office whose revocation proceedings have been suspended because they are unable to meaningfully participate in the process due to mental illness. (**Exhibit 14**). Three have been transferred to Patton State Hospital, two are currently unable to participate per clinical staff, one is unable to participate per defense counsel's observations and meetings with the parolee, and one was deemed able to participate and had her hearing on 9/30/08 where she was assessed 7E.

The BPH staff did not report any issues associated with the current GAP process.

CalPAP reported a few issues regarding the current process:

1. Credit for time served applied to GAP parolees without a hearing- According to CalPAP, some parolees whose revocation proceedings are suspended due to mental illness are given credit for time served by the BPH without a hearing in order to close the case. This causes CalPAP concern because assessing credit for time served is an adverse action against the parolee, which can negatively impact discharge review and parole. For example, parolee Peterson (F78803) was arrested on 10/24/07 and charged with absconding and trespassing. The proceedings were suspended due to the parolee's mental health issues. A supplemental charge for battery was filed in April 2008, while the parolee was still in suspended status. On 4/14/08 the BPH informed CalPAP that the parolee would be given credit for time served effective 4/17/08, although he had not had a hearing and was still too mentally ill to participate in the proceedings. CalPAP objects to this practice, arguing that such disposition should not be imposed without a hearing. In the case of Mr. Peterson, the BPH ultimately agreed to give the parolee a hearing on the charges. The parolee accepted credit for time served at the hearing after he was deemed able to participate.
2. Visiting GAP parolees every two weeks: According to CalPAP, the requirement that defense counsel visit their clients every week causes some concern. In their experience, there are some parolees whose mental illness causes them to become paranoid and/or extremely suspicious when they are seen with such frequency. As a result, some clients become distrustful of their attorney, which can negatively impact the attorney/client relationship. For example, CalPAP's 10/31/08 GAP log includes a notation regarding parolee Smith (F93164), indicating that the attorney opted not to visit him because he was becoming

increasingly wary of counsel. This is not the case with every parolee but in some cases CalPAP believes it would be best to gain mental health status information from the clinicians when regular attorney visits negatively affect the parolee's mental status or compromise the attorney/client relationship.

XIII. Ability to Subpoena Witnesses

Parolees' counsel shall have the ability to subpoena and present witnesses and evidence to the same extent and under the same terms as the state. (Paragraph 21) Valdivia Permanent Injunction.

There was only one hearing in which the parolee rejected the PCH offer and elected to have a full revocation hearing. He was allowed to select witnesses with his attorney's assistance. The parolee named five or six dispositional witnesses who would all testify about the same thing, namely the fact that the parolee is employed. Because the parolee already had letters from his employers, which were included in the revocation packet, the deputy commissioner limited the parolee to two character witnesses for purposes of the revocation hearing.

XIV. Presentation of Evidence at Revocation Hearings

The use of hearsay evidence shall be limited by the parolees' confrontation rights in the manner set forth under controlling case as currently stated in *United States v. Comito*, 177 F.3d 1166 (9th Cir. 1999). The Policies and Procedures shall include guidelines and standard derived from such law. (Paragraph 24) Valdivia Permanent Injunction.

Due process requires that a parolee be allowed to confront and cross-examine adverse testimonial witnesses, unless the hearing officer specifically finds good cause for not allowing confrontation. The *Valdivia* Permanent Injunction further requires that the use of hearsay evidence shall be limited as set forth the U.S. Supreme Court case *United States v. Comito*.

Because no revocation hearings occurred during the tour, the monitors were unable to observe the application of the *Comito* balancing test or the analysis of any hearsay evidence. The DCs appeared familiar with the requirements of *Comito*. Neither of the last two monitoring reports from Plaintiffs' counsel identified any issues with *Comito* at NKSP.

XV. Staffing Levels

Defendants shall maintain sufficient staffing levels in the CDC and BPT to meet all of the obligations of this Order. (Page 6, lines 15-17) Valdivia Permanent Injunction.

Staffing levels are, for the most part, sufficient to meet the obligations of the order. The current *Valdivia* staffing levels are summarized below.

DAPO:

The Supervising Notice Agent reported he has three notice agent vacancies. He hopes to have these positions filled once given approval by CDCR headquarters. A review of

timeliness over the past several months indicates that *Valdivia* timeframes have not been negatively impacted due to the staffing vacancies.

The Assistant Unit Supervisor reported the Hanford Parole Unit is under-staffed both in parole agents and clerical staff. He indicated a full compliment for this unit would be 12 agents; however, the unit currently only has nine agents and one retired annuitant. Clerical staff has one office technician vacancy. Although understaffed, the unit has managed to meet the *Valdivia* timeframes at the PCD, US review, and refer steps with high compliance marks, as previously stated in this report.

BPH:

The ACDC reported a shortage of deputy commissioners at NKSP. There is only one full-time deputy commissioner assigned to the area and all others are retired annuitants. The ACDC stated that the workload has increased over time and that more deputy commissioners are needed to complete all necessary work in a timely manner.

In addition, the NKSP DRU still has a Program Technician III vacancy. The hiring list for this position is rather old and the BPH is currently working to administer the examination to update the list and hire qualified personnel.

❖ CORRECTIVE ACTION:

- **BPH Headquarters should conduct investigation to determine deputy commissioner staffing needs at NKSP and the Wasco State Prison to ensure that both institutions are properly staffed to complete the workload associated with parole revocation and meet the mandates of the Permanent Injunction and Remedial Plan.**

XVI. Revocation Extension

The OCC interviewed the Classification and Parole Representative (C&PR), Assistant C&PR and one Office Technician at NKSP regarding the revocation extension process. The monitors also interviewed CalPAP's staff attorneys, who reported some issues associated with the revocation extension process, discussed below.

The ability to track the revocation extension process has improved with the implementation of the new policy and procedures and the use of the RSTS. These policies and procedures were implemented on May 8, 2008 by memorandum, titled, "Instructions Regarding the Implementation of the Revised Parole Revocation Extension Procedures and Revocation Scheduling and Tracking System." However, despite the improvements in tracking revocation extensions, timeliness is not compliance with the mandates of the Permanent Injunction or the new policy and procedure. Initial analysis indicates that most delays are attributed to late submission of the 115 and 804 to Case Records. These delays cause the remaining steps in the process to be late as well.

Timeliness of receipt of CDC 804 and CDC 115

The OCC reviewed revocation extension cases at NKSP between October 1, 2008 and October 31, 2008. There were 10 cases processed; five of which were processed timely at this step (50%). **(Exhibit 15).**

In discussing timeliness at this step, staff attributed the delays to a number of factors. Staff indicated that the Community Correctional Facilities (CCF), which feed into NKSP, transfer inmates to the institution for medical treatment and it is not until CCF is called to pick them up that Case Records staff is advised the inmate has a CDC 115 pending, causing a delay in the revocation extension process. Additionally, the Case Records Supervisor cannot require staff to stay past their assigned shift to complete reports; therefore, the CDC 115, Rule Violation Report is rarely completed within 24-hours of the incident or discovery of the violation. Also, staff cannot prioritize cases until they are able ascertain which inmates are parole violators, which can create a delay in starting the revocation process.

Timeliness of Notice of Rights

At NKSP, the C&PR receives the CDC 804 and a copy of the CDC115 from Case Records staff, initiates the case in RSTS, checks DEC, enters ADA/disability information in Section I of the BPH 1073 and then forwards the packet to the assigned Correctional Counselor I (CCI) who completes the notice. Although the 804 and 115s are consistently submitted late to Case Records, the CCIs and CCII Supervisors are dedicated to meeting the timelines associated with their involvement in the revocation extension process and try to complete the notice and return the completed notice packet to Records within 24-hours. Staff indicated that once the CDC 804 and CDC 115 are received, the notice is usually completed the next business day.

None of the 10 cases reviewed were processed timely at the notice step. **(Exhibit 15).** However, a review of the RSTS Case Status Reports indicates that the late notices are not the fault of staff responsible for effectuating notice. **(Exhibit 16).** As the Case Status Reports reveal, the CCI or CCII completed the notice within 24-hours of receiving the notice packet in all but one case. *Id.* Therefore, timeliness at this step has been negatively impacted by late receipt of the 804 and 115, not a failure to complete the notice within the mandated timeframes once the packet is received.

Timeliness of Revocation Extension packets referred to the BPH

6/10 (60%) cases were processed timely at the BPH referral step. **(Exhibit 15).**

Timeliness of Attorney Appointment

5/10 (50%) of cases were assigned to CalPAP in a timely manner. **(Exhibit 15).** CalPAP reported that cases are assigned late and that revocation extension packets are incomplete at the time counsel is appointed.

Timeliness of Revocation Extension Assessment

6/10 (60%) of cases were timely at this step. **(Exhibit 15).**

Timeliness of Attorney Consultation

Only 1/10 cases were timely at this step. **(Exhibit 15).**

Timeliness of Probable Cause Hearing

5/9 cases (50%) that proceeded to a PCH had a timely hearing. **(Exhibit 15).** The PCH is often scheduled and then the charges against the parolee are amended or additional charges are alleged. However, CalPAP is not provided any additional information or evidence to support the amended or added charges. CalPAP is simply notified of the changes via email from the Revocation Extension desk.

Timeliness of Revocation Extension Hearing

Only one case went to a Revocation hearing and the hearing was timely. **(Exhibit 15).**

❖ **CORRECTIVE ACTION:**

- **DAI must hold staff accountable when *Valdivia* timeframes are consistently not met. The policies and procedures are in place and have been provided to staff; therefore, staff must be held accountable for consistently failing to follow them.**